TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 447.

CORWIN D. BACHTEL, PLAINTIFF IN ERROR,

vs.

R. FRANK WILSON, SHERIFF OF STARK COUNTY, OHIO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

FILED OCTOBER 19, 1906.

(20,412.)

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INDEX.

	Original.	Print.
Certificate of clerk of the supreme court of Ohio as to entry of judgment	*a*	1
Assignment of errors	*b*	1
Petition for writ of error	*e*	2
Order allowing writ of error	*f*	3
Bond on writ of error	*h*	3
Writ of error	*k*	5
Citation and service	*n*	6
Petition in error	*p*	6
Waiver of summons in error	*r*	8
Order suspending judgment	*s*	8
Judgment	*t*	8
Docket entries	*w*	10
Clerk's certificate to record	*x*	10
Transcript from circuit court of Stark county	1	11
Petition for writ of *habeas corpus*	1	11
Exhibit A—Warrant	2	12
Order to issue writ of *habeas corpus*	2	12
Writ of *habeas corpus*	3	13
Sheriff's return	3	13

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 23, 1906.

	Original.	Print.
Exhibit A—Warrant	4	14
B—Indictment	4	15
C—Demurrer	6	16
Order postponing hearing and fixing bail	7	17
Recognizance	8	18
Order dismissing application and remanding petitioner	9	19
Order of supreme court of Ohio suspending judgment	10	20
Bond to suspend judgment	11	20
Mandate from supreme court of Ohio	11	21
Opinion	15	24
Clerk's certificate	25	30

a Supreme Court of Ohio.

10210.

CORWIN D. BACHTEL, Plaintiff in Error,
vs.
FRANK WILSON, Sheriff of Stark County, Defendant in Error.

Error to the Circuit Court of Stark County.

I, Lawson E. Emerson, Clerk of the Supreme Court of Ohio, do hereby certify that in the case pending in this court on a petition in error as No. 10,210, wherein Corwin D. Bachtel was plaintiff in error, and Frank Wilson, Sheriff of Stark County, was defendant in error, a final judgment was rendered by the said Supreme Court of Ohio on the 29th day of June, A. D., 1906.

Witness my hand and Seal of said Supreme Court at Columbus, Ohio, this fourth day of October, A. D., 1906.

[Seal of the Supreme Court of the State of Ohio.]

LAWSON E. EMERSON,
Clerk of Supreme Court of Ohio,
By J. G. OBERMEYRE, *Deputy.*

b Supreme Court of Ohio.

No. 10210.

CORWIN D. BACHTEL, Plaintiff in Error,
v.
R. FRANK WILSON, Sheriff of Stark County, Defendant in Error.

Assignment of Errors.

Now comes Corwin D. Bachtel, plaintiff in error, and files the following assignment of errors, which, he alleges, intervened to his prejudice in the proceedings had, and the judgment rendered by the Supreme Court of Ohio on June 29, 1906, to which he duly excepted.

The Supreme Court of Ohio erred in holding and deciding that section 30 of an act of the General Assembly of the State of Ohio entitled "an act to authorize free banking," passed March 21, 1851, as amended April 24, 1879, (3821-85) Bates' Annotated Statutes of Ohio, was valid. The validity of said section was denied and drawn in question by the plaintiff in error on the ground that it was repugnant to the Constitution of the United States, and in contravention thereof.

The said errors are more particularly set forth as follows:

The Supreme Court of Ohio erred in holding and deciding that the privileges and immunities of the plaintiff in error as a citizen of the

United States were not abridged, and that he was not deprived of his liberty and property by the State of Ohio without due process of law nor denied the equal protection of the laws as guaranteed by the Fourteenth Amendment of the Constitution of the United
c States by being arrested and prosecuted under indictments found and returned solely under favor of section 30 of the above recited acts.

For which errors the plaintiff in error Corwin D. Bachtel prays that the said judgment of the Supreme Court of Ohio, dated June 29, 1906, be reversed and a judgment be rendered in favor of the plaintiff in error and for costs.

WELTY & ALBAUGH,
VIRGIL P. KLINE,
WM. A. LYNCH,
Attorneys for Corwin D. Bachtel, Plaintiff in Error.

d [Endorsed:] No. 10210. Supreme Court of Ohio. Corwin D. Bachtel, Plaintiff in error, *v.* R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in error. Assignment of errors. Filed Sep. 14 1906 Supreme Court of Ohio, L. E. Emerson, Clerk. Welty & Albaugh, Virgil P. Kline and Wm. A. Lynch, Attorneys for plaintiff in error.

e Supreme Court of Ohio.

No. 10210.

CORWIN D. BACHTEL, Plaintiff in Error,
v.
R. FRANK WILSON, Sheriff of Stark County, Ohio, Defendant in Error.

Petition for Writ of Error.

Assignment of Errors and Prayer.

Considering himself aggrieved by the final decision of the Supreme Court of Ohio in rendering judgment against him in the above entitled case, the plaintiff in error, a citizen of the United States, born therein and a resident of the State of Ohio, hereby prays a writ of error from the said decision and judgment to the United States Supreme Court and an order fixing the amount of a supersedeas bond.

And the said Corwin D. Bachtel assigns the following errors in the records and proceedings of the said case:

The Supreme Court of Ohio erred in holding and deciding that section 30 of an act of the General Assembly of the State of Ohio entitled "an act to authorize free banking," passed March 21, 1851, as amended April 24, 1879, (3821-85) Bates' Annotated Statutes of Ohio, was valid. The validity of said section was denied and drawn

in question by the plaintiff in error on the ground that it was repugnant to the Constitution of the United States, and in contravention thereof.

The said errors are more particularly set forth as follows:

The Supreme Court of Ohio erred in holding and deciding that the privileges and immunities of the plaintiff in error as a
f citizen of the United States were not abridged, and that he was not deprived of his liberty and property by the State of Ohio without due process of law nor denied the equal protection of the laws as guaranteed by the Fourteenth Amendment of the Constitution of the United States by being arrested and prosecuted under indictments found and returned solely under favor of section 30 of the above recited act.

For which errors the plaintiff in error Corwin D. Bachtel prays that the said judgment of the Supreme Court of Ohio dated June 29, 1906 be reversed and a judgment be rendered in favor of the plaintiff in error and for costs.

WELTY & ALBAUGH,
VIRGIL P. KLINE,
WM. A. LYNCH,
Attorneys for Corwin D. Bachtel,
Plaintiff in Error.

STATE OF OHIO, *Supreme Court, ss:*

Writ of eror allowed; and the said Corwin D. Bachtel having presented a bond in the sum of seven thousand dollars which is approved by me, this allowance shall act as a supersedeas and stay of all further proceedings under said indictments until final judgment in the Supreme Court of the United States.

JOSEPH McKENNA,
Asso. Justice.

Sept. 21st 1906.

g [Endorsed:] No. 10210. Supreme Court of Ohio. Corwin D. Bachtel, Plaintiff in error, *v.* R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in error. Petition for Writ of Error. Assignment of Errors and Prayer. Filed Oct. 4, 1906. Supreme Court of Ohio. L. E. Emerson, Clerk. Welty & Albaugh, Virgil P. Kline and Wm. A. Lynch, Attorneys for plaintiff in error.

h CORWIN D. BACHTEL, Plaintiff in Error,
v.
R. FRANK WILSON, Sheriff of Stark County, Ohio, Defendant in Error.

Bond.

Know all men by these presents, that we Corwin D. Bachtel as principal and The Bankers' Surety Company, a corporation, as surety, are held and firmly bound unto R. Frank Wilson, Sheriff

of Stark County, Ohio, in the sum of Seven Thousand Dollars, to be paid to the said defendant in error, to which payment, well and truly to be made, we bind ourselves jointly and severally firmly by these presents.

Dated this 17th day of September, 1906.

Whereas, the above-named plaintiff in error seeks to prosecute his writ of error to the U. S. Supreme Court to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Ohio.

Now, therefore the condition of this obligation is such, that if the above-named plaintiff in error shall prosecute his said writ of error to effect, and answer all costs and damages that may be adjudged if he shall fail to make good his plea, and abide by the order and judgment of the Supreme Court of the United States, then this obligation to be void, otherwise to remain in full force and effect.

This bond executed in duplicate, one only to be enforced.

CORWIN D. BACHTEL.
THE BANKERS' SURETY COMPANY.
HARVEY D. GOULDER, *President.*

Attest:
P. W. HARVEY, *Secretary.*

[Seal of the Bankers' Surety Company, Cleveland, Ohio.]

i STATE OF OHIO, *Cuyahoga County, ss:*

Harvey D. Goulder and P. W. Harvey, being each duly sworn on oath, depose and say; we are each of lawful age and Harvey D. Goulder is the President and P. W. Harvey is the Secretary of The Bankers' Surety Company, a corporation organized and existing under the laws of the State of Ohio, and authorized by the laws of said state to become surety upon bonds like the one above written, and for the purposes therein set forth; that we know the contents of the foregoing instrument and that the same has been duly executed by us, as the President and Secretary of the said The Bankers' Surety Company under its corporate seal by authority of its Board of Directors, and that said The Bankers' Surety Company is worth more than the sum of Seven thousand Dollars over and above all its debts and liabilities.

HARVEY D. GOULDER.
P. W. HARVEY.

Subscribed and sworn to before me September 17, 1906.

[Notarial Seal, Cuyahoga County, Ohio.]

E. H. FISHMAN,
Notary Public, Cuyahoga County, Ohio.

Bond approved and to operate as a supersedeas and stay of proceedings.

JOSEPH McKENNA,
Asso. Justice.

Sept. 21st, 1906.

j [Endorsed:] No. 10210. Corwin D. Bachtel, Plaintiff in Error, *v.* R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in Error. Bond. Filed Oct. 4, 1906. Supreme Court of Ohio. L. E. Emerson, Clerk.

k *(Writ of Error.)*

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Ohio, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Corwin D. Bachtel and R. Frank Wilson, sheriff of Stark County, Ohio, wherein was drawn in question the validity of a statute of the State of Ohio, and an authority exercised under said statute, on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of their validity, a manifest error hath happened to the great damage of the said Corwin D. Bachtel, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to cor-
l rect that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 21st day of September, in the year of our Lord one thousand nine hundred and six.

JAMES H. McKENNEY,
Clerk Supreme Court U. S.

m [Endorsed:] No. 10210. Supreme Court of United States. Corwin D. Bachtel, Plaintiff in error, *v.* R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in error. Writ of Error. Filed Oct. 4, 1906. Supreme Court of Ohio. L. E. Emerson, Clerk.

n *(Citation.)*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to R. Frank Wilson, Sheriff of Stark County, Ohio, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the clerk of the Supreme Court of the State of Ohio, wherein Corwin D. Bachtel is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the signature of the undersigned Associate Justice of the Supreme Court of the United States this 21st day of September, A. D. 1906.

JOSEPH McKENNA,
Associate Justice.

Sept. 21st, 1906.

CANTON, OHIO, *September* 25, 1906.

I, attorney of record for the defendant in error in the above entitled case, hereby acknowledge due service of the above citation, and enter an appearance in the Supreme Court of the United States.

CHARLES C. UPHAM &
JOHN W. CRAINE,
Attorneys for R. Frank Wilson, Sheriff of Stark County, Ohio.

o [Endorsed:] No. 10210. Supreme Court of United States. Corwin D. Bachtel, Plaintiff in Error, *v.* R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in Error. Citation. Filed Oct. 4, 1906. Supreme Court of Ohio. L. E. Emerson, Clerk.

p In the Supreme Court for the State of Ohio.

No. 10210.

CORWIN D. BACHTEL, Plaintiff in Error,
vs.
FRANK WILSON, Sheriff of Stark County, Defendant in Error.

Petition in Error.

Plaintiff in error Corwin D. Bachtel states that in the vacation after the February term, A. D. 1906, of the Circuit Court of Stark County, Ohio, to wit: on May 24th, 1906, the Plaintiff in error filed in the office of the Clerk of said Circuit Court, his petition for a writ

of *habeas corpus* and on that day applied to the Honorable Thomas T. McCarty, one of the judges of said Circuit for a writ of *habeas corpus* to be issued to Frank Wilson, Sheriff of Stark County, Ohio, which writ was thereupon on that day issued by order of said Judge, commanding said Frank Wilson Sheriff as aforesaid, to have the body of the petitioner before the Judges of said Circuit Court or any two of them on June 1st, 1906; that said Frank Wilson, Sheriff as aforesaid made due return of said writ as will more fully appear by the transcript of said proceedings filed herein; that thereupon such proceedings were had under said writ; that in the vacation after said February term, 1906, to wit, on June 8th, 1906, the Judges of said Circuit Court rendered a judgment upon said application writ and return, that said plaintiff in error the petitioner herein should be remanded to the custody of the defendant in error, Sheriff of said Stark County, Ohio, to be held by him in custody as he was held at the time of the issue of said writ of *habeas corpus* and that the
q plaintiff in error pay the costs of said proceedings taxed at $—. A full transcript of the final record of the proceedings had under said application and writ and a transcript of the docket and Journal Entries therein are filed herewith.

There is error in said record and proceedings in this, to wit:

1st. That said Judges of said Circuit Court erred in holding that the Court of Common Pleas of said Stark County had jurisdiction of the person of the defendant at the time of the issuance of said writ.

2nd. That said Judges erred in holding that Section 30 of the act of March 21st, 1851, entitled "an act to authorize free banking" as amended April 24, 1879 (Section 3821-85 of the Annotated Statutes of Ohio) was not void and invalid as in violation of the provisions of article 1, Sections 1 and 2 of the Constitution of Ohio.

3rd. That said Judges erred in holding that Section 30 of the act of March 21st, 1851, entitled "an act to authorize free banking" as amended April 24, 1879 (Section 3821-85 of the Annotated Statutes of Ohio) was not void and invalid as in violation of the provisions of Article 2 Section # 26 of the Constitution of Ohio.

4th. That said Judges erred in holding that Section 30 of the act of March 21, 1851, entitled "an act to authorize free banking" as amended April 24, 1879 (Section 3821-85 of the Annotated Statutes of Ohio) was not void and invalid as in violation of section 1 of the 14th amendment to the Constitution of the United States.

5th. That said Judges erred in remanding the plaintiff in error to the custody of the Sheriff of said Stark County, Ohio, instead of ordering his discharge.

r 6th. And for other errors apparent on the face of the record.

Plaintiff in error therefore prays that said judgment and order be reversed and that he be restored to all things he has lost by reason thereof.

JAY P. DAWLEY AND
WELTY & ALBAUGH,
Attorneys for Plaintiff in Error.

The Defendant in error hereby waives the issue, service and return of summons in error in the above case and hereby voluntarily enters his appearance herein.

June 16th, 1906.

R. FRANK WILSON,
By CHARLES P. UPHAM AND
JOHN W. CRAINE,
His Att'ys.

s In the Supreme Court of the State of Ohio.

MONDAY, *June* 18, 1906.

10210.

CORWIN D. BACHTEL
vs.
FRANK WILSON, Sheriff.

Entry.

On motion of plaintiff in error and for good cause shown it is hereby ordered by the court that the execution of the judgment herein be suspended upon plaintiff in error giving an undertaking in the sum of $7000.00 subject to the approval of the Clerk of Courts of Stark County, O., until the final determination of this action in this court.

t Supreme Court of the State of Ohio, January Term, A. D. 1906, to-wit, Friday, June 29th.

THE STATE OF OHIO, *City of Columbus:*

10210.

CORWIN D. BACHTEL
vs.
FRANK WILSON, Sheriff.

Error to the Circuit Court of Stark County.

This cause came on to be heard upon the petition in error and was argued by counsel of the respective parties. The Court find from the record of the Circuit Court brought before it by said petition in error, that the plaintiff in error was indicted by a grand jury of the Court of Common Pleas of Stark County, Ohio, charging him with the commission of an offense contrary to the provisions of a statute of the State of Ohio, to-wit: section thirty of an act of the General Assembly of the state entitled "an act to authorize free banking," passed March 21, 1851, as amended April 24, 1879

(3821-85) Bates Annotated Statutes of Ohio; that said section of said statute was and is the only statute or law of the state of Ohio under which said indictments were or could be found, returned or prosecuted; that upon the return of said indictments to said court of Common Pleas the plaintiff in error demurred to said indictments upon the ground that said statute, section thirty aforesaid was unconstitutional and that said statute and indictments were void for the reason, among others that they were repugnant to and contravened the provisions of section one of the fourteenth amendment of the constitution of the United States and that therefore said Court of Common Pleas was without jurisdiction in law over the plaintiff in error, or in respect of the charge made in said indictments, which demurrer was by said court of Common Pleas heard and overruled; that the plaintiff in error thereafter petitioned one of the judges of the Circuit Court of the State of Ohio in and for the said
u Stark County for a writ of *habeas corpus* alleging in his said petition that he was unlawfully imprisoned and deprived of his liberty by the defendant in error by virtue of the order and writ of said Court of Common Pleas made and issued under said indictments, and that said imprisonment was without legal warrant because said Court of Common Pleas was without jurisdiction for the reason that said statute and indictments were void because they were repugnant to section one, article one, section two article one, and section twenty six, article one of the fourteenth amendment of the constitution of the United States; that the judge of said Circuit Court, petitioned as aforesaid, caused said writ of *habeas corpus* to issue to the defendant in error returnable to the three judges of said Circuit Court or any two of them; that upon the return of said writ the plaintiff in error contended at the hearing before the judges of said Circuit Court to whom said return was made that said statute and indictments were void for the reasons aforesaid, but said judges overruled said contention and adjudged that said statute and indictments were not repugnant to said section one article one, section two, article one, section twenty six, article two of the constitution of the State of Ohio or section one of the fourteenth amendment of the constitution of the United States or either of them; that in his petition in error to this court the plaintiff in error assigned as error in the judgment of the judges of said Circuit Court, that said judges erred in holding that section 30 of the act of March 21, 1851, entitled "an act to authorize free banking," as amended April 24, 1879, section (3821-85) of the annotated Statutes of Ohio, was not void and invalid as in violation of section one, article one, section two, article one, and section twenty six, article two of the
v constitution of the State of Ohio and of section one of the fourteenth amendment of the constitution of the United States. Upon the hearing of this cause before this court the plaintiff in error contended that said statute was void and invalid for the reasons so as aforesaid assigned. On consideration whereof it is decided and adjudged that said statute and indictments are not void nor invalid nor repugnant to the said section one, article one, section two, article one and section twenty six, article two of the con-

stitution of the State of Ohio or section one of the fourteenth amendment to the constitution of the United States or either of them or for any of the reasons assigned in said petition in error, and it is adjudged and ordered by this court that the judgment and order of said judges of the Circuit Court be and they are hereby affirmed and that the order heretofore granted suspending the judgment of said Circuit Court be and the same is hereby dissolved and it appearing to the court that there were reasonable grounds for this proceeding in error, it is ordered that no fee or penalty shall be assessed herein. It is further ordered that the defendant in error recover his costs from the plaintiff in error herein expended taxed at $—. Ordered that a special mandate be sent to the judges of the Circuit Court of Stark County to carry this judgment into execution.

w Supreme Court of Ohio, January Term, 1906.

10210.

CORWIN D. BACHTEL, Plaintiff in Error,
vs.
FRANK WILSON, Sheriff, Defendant in Error.

Error to the Circuit Court of Stark County.

June 18. Petition in error, Waiver, and Circuit Court Transcript filed.
18. Original papers filed.
18. Entry suspending judgment. Bond $7000.00. J. 21.
18. Copy of entry suspending judgment sent Clerk.
29. Judgment affirmed. J. 21.
July 12. Original papers sent Clerk.
24. Mandate issued.
Sept. 14. Assignment of Errors filed.
Oct. 4. Petition for Writ of Error filed.
Bond in Duplicate filed.
Writ of Error filed.
Citation on Writ, and entry of appearance filed.

x Supreme Court of Ohio.

10210.

CORWIN D. BACHTEL, Plaintiff in Error,
vs.
FRANK WILSON, Sheriff of Stark County, Defendant in Error.

Error to the Circuit Court of Stark Co.

I, Lawson E. Emerson, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing is a full and true transcript of the

record of the pleadings, proceedings and final judgment and of the docket and journal entries in the above entitled case in said Supreme Court. And that attached hereto is a full transcript of the record of the pleadings, proceedings and judgment in said Circuit Court of Stark County which was brought before our Supreme Court by petition in error filed in this case and upon which said Supreme Court rendered its said judgment, together with the mandates issued out of this Court to said Circuit Court to carry into effect the order of the supersedeas and the final judgment herein of said Supreme Court.

Witness my hand and the seal of the Supreme Court of Ohio, this fourth day of October, A. D. 1906.

[Seal the Supreme Court of the State of Ohio.]

LAWSON E. EMERSON, *Clerk*,
By J. G. OBERMEYRE, *Deputy*.

1 At a term of the Circuit Court begun and held in the Fifth Judicial Circuit of the Circuit Court of the State of Ohio on the 8th day of June, in vacation after the February Term, A. D. 1906, by and before their honors, M. H. Donahue, T. T. McCarty and Frank Taggart, Judges of Said Court, Judge M. H. Donahue, Presiding.

In the record of proceedings of said Court then and there held among other things appears the following, to wit:—

THE STATE OF OHIO, *Stark County, ss:*

In the Circuit Court.

Docket 2, Page 707.

In the Matter of the Application of CORWIN D. BACHTEL for *Habeas Corpus.*

Habeas Corpus.

Be it remembered that heretofore, to wit, on the 24th day of May in the year of our Lord nineteen hundred and six there was duly filed in the Clerk's Office of said Circuit Court a certain petition in this cause which petition reads and is in the words and figures following, to wit:—

Petition.

In the Circuit Court of the State of Ohio, Stark County, *ss:*

In the Matter of the Application of CORWIN D. BACHTEL for a Writ *Habeas Corpus.*

The petitioner respectfully states that he is unlawfully restrained of his liberty by Frank Wilson sheriff of said county at the county

jail of said county. The pretended cause of said imprisonment is a warrant issued by the clerk of the Court of Common Pleas of said county a copy of which is hereto attached marked Exhibit A. The petitioner states that as he is advised the indictment referred to in said warrant was presented under and solely by virtue of a certain statute, to wit: section 30 of an act entitled "an act to authorize Free Banking" passed by the General Assembly of the State of Ohio, March 21, 1851, as amended April 24, 1879; that said statute is unconstitutional and void, and that said court was without juris-
2 diction, power or authority to issue said warrant, and in law the same is void. Wherefore your petitioner prays that a writ of *habeas corpus* may be granted, and that he may he discharged from such unlawful restraint and imprisonment.

CORWIN D. BACHTEL,
By WELTY & ALBAUGH &
WM. A. LYNCH,
His Attorneys.

STATE OF OHIO, *Stark County, ss:*

Corwin D. Bachtel, being duly sworn says that he is the petitioner in this proceedings; that the facts stated and allegations contained in the foregoing petition are true as he verily believes.

CORWIN D. BACHTEL.

Sworn to by said Corwin D. Bachtel before me and by him signed in my presence this 24th day of May, 1906.

JACOB J. WISE, [SEAL.]

EXHIBIT "A."

Capias.

THE STATE OF OHIO, *Stark County, ss:*

To the Sheriff of said County, Greeting:

We command you, to take Corwin D. Bachtel and him safely keep, so that you have his body before the Judge of the Court of Common Pleas at the Court House in Canton, in said County of Stark, to answer to an indictment for making false entry in report of condition of bank and hereof fail not, and have you then and there this writ.

Witness my hand and the seal of said Court, at Canton, Ohio, this 24th day of May, 1906.

JACOB J. WISE, *Clerk.*

And afterwards on the 24th day of May, A. D. 1906, during vacation after the February Term of the said Circuit Court at Chambers, to wit:—

Journal B-454.

Be it remembered that on this day, at the Court House at the city of Canton, in said county, came Corwin D. Bachtel and his attorneys

Welty & Albaugh and Wm. A. Lynch and submitted to the undersigned, one of the judges of said court his petition for a writ of *habeas corpus*, which had been filed in the office of the clerk of said court, and said petition being heard it is now here ordered that the clerk of the court shall issue the same to the sheriff of said county commanding him to have the body of said Corwin D. Bachtel before the undersigned at the Court House Court Room No. 3 at 11 o'clock A. M.

3 Done at Canton, May 24, 1906.

THOMAS T. McCARTY,
Judge of the Circuit Court, Stark County, Ohio.

And thereupon on this same day there was duly issued from the Clerk's Office of said Court a certain writ of *habeas corpus* in this cause which writ of *habeas corpus* reads and is in the words and figures following, to wit:—

Writ of Habeas Corpus Issued.

THE STATE OF OHIO:

Circuit Court of Stark County.

To the Sheriff of Stark County, Greeting:

We command you that the body of Corwin D. Bachtel by you imprisoned and restrained of his liberty, as it is said, you have before Thomas T. McCarty, a Judge of our Circuit Court, on the 24" day of May 1906, at 11 o'clock A. M., at Room No. 3 in the Court House in said County, to do and receive what said Judge shall then and there consider concerning him in his behalf; and that with this writ you then and there return the cause of the taking and detention of the said Corwin D. Bachtel; and have you then and there this writ with your service thereon.

Witness my signature and the seal of said Court at Canton, Ohio, this 24" day of May A. D. 1906.

JACOB J. WISE,
Clerk of said Circuit Court. [SEAL.]

And thereupon on this same day the Sheriff of Stark County duly returned to the Clerk's Office of said Court the foregoing writ of *habeas corpus* issued to said Sheriff which return reads and is in the words and figures following, to wit:—

Writ of Habeas Corpus Returned.

On May 24th, 1905, I received the writ of *habeas corpus* in this cause and in obedience to the command thereof, having in my custody and under restraint the said Corwin D. Bachtel by virtue of a capias (a copy of which is hereto attached marked "Exhibit A" and made a part of this return) issued by Jacob J. Wise Clerk of the

Court of Common Pleas of Stark County, Ohio, on the finding by the Grand Jury of Stark County, Ohio, at the May Term, 1906, of an indictment (a copy of which is hereto attached marked "Exhibit B." and made a part of this return) against the said Corwin D. Bachtel for making a false entry in a report of the con-
4 dition of The Canton State Bank to the Auditor of State of The State of Ohio under Section 3821-85 of the Revised Statutes of Ohio, and known as the free banking act of 1851. That upon the return of the said Grand Jury finding and presenting said indictment the said Corwin D. Bachtel filed in the Court of Common Pleas of Stark County, Ohio, a demurrer (a copy of which is hereto attached marked "Exhibit C" and made a part hereof) to the same averring the unconstitutionality of said Statute, which demurrer said Court overruled and required said Corwin D. Bachtel to plead to said indictment which he thereupon did, and pleaded "not guilty" and said Court having been requested by the Prosecuting Attorney of Stark County Ohio, to fix a bond for said Bachtel's appearance, from day to day to answer said indictment, fixed the same at one thousand ($1000.00) dollars, which the said Corwin D. Bachtel refused to give and thereupon a capias was issued to me commanding me to arrest said Bachtel and in obedience thereto, I took him into custody and now have him and now have his body before you, being imprisoned as aforesaid by me under said capias.

R. FRANK WILSON,
Sheriff of Stark County, Ohio.

EXHIBIT "A."

Capias.

THE STATE OF OHIO, *Stark County, ss:*

To the Sheriff of said County, Greeting:

We command you, to take Corwin D. Bachtel and him safely keep, so that you have his body before the Judge of the Court of Common Pleas at the Court House in Canton, in said County of Stark, to answer to an indictment for making false entry in report of condition of bank and hereof fail not, and have you then and there this writ.

Witness my hand and the seal of said Court, at Canton, Ohio, this 24th day of May 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

EXHIBIT "B."

Indictment for Making False Entry in Report of Condition of Bank.

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May, in the Year of our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find, present: That Corwin D. Bachtel late of said County, on or about the 9th day of March in the year of our Lord one thousand nine hundred and five, at the County of Stark aforesaid being then and there the cashier of The Canton State Bank a banking Company organized and incorporated under the law of the State of Ohio, known as and being the free banking act of 1851 and found in the Revised Statutes of Ohio, and which banking company was located and engaged in the business of banking in the city of Canton, in said County of Stark and State of Ohio and being in said County of Stark and State of Ohio unlawfully and knowingly did make a false entry in a report of the said banking Company showing its condition at the close of business March 6th, 1905, to W. D. Guilbert, Auditor of the State of Ohio, in compliance with a requisition made March 7th, 1905, by the said W. D. Guilbert, Auditor of the State *of the State* of Ohio, to the cashier of The Canton State Bank, Canton, Ohio, in accordance with the laws of The State of Ohio, with intent then and there to injure and defraud the said, The Canton State Bank, its directors and depositors and to deceive W. D. Guilbert the Auditor of the State of Ohio, and to deceive Austin C. Brant the President of said Banking Company and to deceive William Wagner, William R. Zollinger and William H. Hoover part of the directors of said banking Company which said report is in the words and figures following, to wit:—

DR.			CR.	
Resources.	Dollars.	Cts.	Liabilities.	Dollars. Cts.
1. Loans on real estate,			1. Capital stock paid in	180000.00
2. All other loans and discounts.....	742807.81		2. Surplus.....	19000.00
3. Overdrafts..	4925 98		3. Undivided profits	7988.39
4. United States Bonds on hand			4. State bank notes outstanding	
5. State bonds on hand			5. Dividends unpaid	9 00
6. Other stocks, bonds & mortgages			6. Individual deposits.....	602555.45
7. Due from other banks and bankers..... ..	56270.74		7. Due to banks and bankers	
8. Real estate			8. Notes and bills rediscounted.....	30000.00
			9. Bills payable	

6

9. Furniture and fixtures..		1500.00
10. Current expenses.....		1636.18
11. Premium on bonds,		
12. Cash items.		10784.79
13. Gold coin.....	2320	
Silver coin.....	2913.34	
		5233.34
14. Nation- bank notes &		
15. United States notes. ...		16394.00
Total		839552.84

Total.....	839552.84

STATE OF OHIO, *County of Stark:*

Sworn to and subscribed before me this 9th day of March, 1905.

JOHN T. BLAKE,
Notary Public. [SEAL.]

I, Corwin D. Bachtel, of "The Canton State Bank," do solemnly swear that the above is true to the best of my knowledge and belief.

CORWIN D. BACHTEL,
Cashier.

This bank was incorporated May 17", 1900, under act of 1851, and commenced business May 21" 1900.

C. D. BACHTEL, *Cashier.*

which said false entry so made as aforesaid, by the said Corwin D. Bachtel cashier of the said, The Canton State Bank was as follows: "overdrafts 4925.98" thereby making said report to show that at the close of business of the bank on March 6, 1905, there were only overdrafts to the amount of $4925.98 whereas in truth and in fact and at the time well known to the said Corwin D. Bachtel cashier as aforesaid, the overdrafts in said bank at the close of business on March 6, 1905, were more than Thirty Thousand ($30000.00) dollars, all of which was at the time he made said false entry in said report, well known to the said Corwin D. Bachtel as aforesaid. contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed: "A true bill. Joseph Folk, Foreman of Grand Jury.

EXHIBIT "C."

Demurrer.

This defendant demurs to the said Indictment because the facts stated therein do not constitute an offense punishable by the laws of this State.

JAY P. DAWLEY &
WELTY & ALBAUGH,
Attorneys for Defendant.

Notice.

The State of Ohio will take notice that upon the hearing
7 of this demurrer Corwin D. Bachtel the defendant herein, will show that he was born in the United States and is now a resident of the State of Ohio; that he is subject to the jurisdiction of the United States and a citizen thereof and of the State of Ohio; that by the laws of the State of Ohio no indictment could have been found except under Section 30 of an Act entitled "An Act to authorize Free Banking" passed March 21st, 1851, and amended April 24th, 1879. Defendant says that said Act, and law, should not be enforced against him because it abridges his privileges and immunities as a citizen of the United States. That by its enforcement against him it will deprive him of his liberty and property without due process of law and that said Act denies him the equal protection of the laws. He says that said Act affects but a small number and a very small proportion of the class of persons in the State of Ohio; who are engaged in the employments designated in said Act in the same manner and under the same conditions and circumstances as this defendant, and that said Act is unequal and partial; and that said Act contravenes Article 14, Section 1, of the amendments to the Constitution of the United States and is therefore void. Upon the hearing of said demurrer this defendant will also insist that said Act is void because it contravenes Article 1, Sections 1 and 2, and Article 2, Section 26 of the Constitution of Ohio. Said defendant will further contend that the facts stated in said Indictment do not contain an offense under the laws of Ohio.

JAY P. DAWLEY &
WELTY & ALBAUGH,
Attorneys for Defendant.

Certificate.

STATE OF OHIO, *Stark County, ss:*

In Court of Common Pleas.

I hereby certify that the foregoing is a true copy of the Demurrer and Notice in the above entitled cause filed in the Clerk's Office of said Court on the 22nd day of May A. D. 1906.

Witness my name and seal of said Court this 24th day of May A. D. 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

And thereupon at this same term and date, to wit:—

Journal B, 454.

Be it remembered that on this day, at the Court House at the City of Canton, in said county, Frank Wilson, the sheriff of said
8 county having now appeared with the body of said Corwin D. Bachtel before the undersigned judge of said court in pursu-

ance of the writ of *habeas corpus* issued in the above entitled proceeding, it is ordered that said sheriff shall have the body of said Corwin D. Bachtel before the judges of our said Circuit Court, or any two of the-, at the Court House of Morrow County at Mt. Gilead, the county seat of said county on Friday, June 1st 1906, at 9 o'clock A. M. unless the said Corwin D. Bachtel shall enter into a recognizance to the State of Ohio, in due form to appear before said judges at that time and place, and abide any order that may be made by them in the premises, in the sum of seven thousand dollars, with sureties to our acceptance and it is further ordered that at said time and place above fixed said sheriff shall make full return to said writ.

Done at Canton, at the Court House Court Room No. 3 May 24, 1906.

T. T. McCARTY,
Judge of the Circuit Court, Stark County, Ohio.

And thereupon at this same term and date, to wit:

Journal B, 455.

Be it remembered that on May 24", 1906 Corwin D. Bachtel, J. H. Bachtel, A. T. Stone, D. S. Sommer, Helen M. Bachtel & John Skeeles his sureties personally appeared before the undersigned, Hon. Thomas T. McCarty, one of the Judges of said Court and jointly and severally acknowledge themselves to owe to the State of Ohio the sum of Seven Thousand Dollars ($7000.00) to be levied of their respective goods and chattels, lands and tenements if default be made in the condition following, to wit: The condition of this Recognizance is such that if the above bound Corwin D. Bachtel shall personally be and appear before the Judges of said Circuit Court or any two of them at the Court House of the County of Morrow, State of Ohio, at Mt. Gilead, in said County on Friday, June 1", 1906 at 9 o'clock A. M. and shall abide the order or judgment of said Judges or any two of them and not depart without leave, then this Recognizance shall be void; otherwise it shall be and remain in full force and virtue in law.

9

CORWIN D. BACHTEL.
J. H. BACHTEL.
A. T. STONE.
D. S. SOMMER.
HELEN M. BACHTEL.
JOHN SKEELES.

Taken and acknowledged in open Court on the day and year first above written.

THOMAS T. McCARTY,
Judge of said Circuit Court.

And afterwards on the 8th day of June A. D. 1906 during vacation after the February Term of the said Circuit Court at Chambers, to wit:

Journal B, 455.

This cause came on to be heard at chambers after the February Term, 1906, to wit, on June 8th, 1906, before M. H. Donahue, Frank Taggart and T. T. McCarty the Judges of the Circuit Court of Stark County, Ohio, on the petition and exhibits attached thereto of the applicant Corwin D. Bachtel for a Writ of *Habeas Corpus* and upon the Return and exhibits attached thereto of R. Frank Wilson as Sheriff of Stark County, Ohio; and the same having been heard upon said pleadings, exhibits and arguments of Counsel, the Court find that the said Corwin D. Bachtel was at the time of the filing of said application in the custody of R. Frank Wilson as the Sheriff of Stark County, Ohio, under a capias or order of arrest issued therein and by the Common Pleas Court of said County and which capias or order of arrest was issued by said Court under and by virtue of an indictment found and returned by the Grand Jury of said County against the said Corwin D. Bachtel charging him with having committed the offense set forth in said indictment under Section 30 of an Act entitled "An Act to authorize Free Banking," passed by the General Assembly of the State of Ohio on March 21st, 1851, and as the same was amended on April 24th, 1879 and now known as Section (3821-85) of the annotated statutes of Ohio. (And the Court find that said Section 30 of said Act is not in contravention of Article 1, sections 1 and 2 and Article 2, Section 26 of the Constitution of Ohio and that it is not in contravention of the fourteenth amendment of the Constitution of the United States as alleged by the said Corwin D. Bachtel in his said Application) and the Court further find that said Corwin D. Bachtel is not and was not at the time of the filing of said application, unlawfully detained by the respondent R. Frank Wilson as Sheriff of said Stark County, Ohio, and that the application of the said Corwin D. Bachtel for a Writ of *Habeas Corpus* should be dismissed. It is therefore ordered, considered and adjudged by the said Judges that the application of the said Corwin D. Bachtel for said Writ of *Habeas Corpus* be dismissed and that the said Corwin D. Bachtel be remanded to the custody of the said R. Frank Wilson, respondent and sheriff of Stark County, Ohio, and by virtue of said capias and order of arrest and indictment. It is further considered that the said Corwin D. Bachtel pay the costs of this proceeding taxed at $— and for which execution is awarded against him, and to all of the findings, orders and judgment aforesaid, the said Corwin D. Bachtel then and there excepts.

Mandate from Supreme Court Filed.

And afterwards on the 11th day of June A. D. 1906 there was duly filed in the Clerk's office of said Court a certain Mandate from Supreme Court in this cause which Mandate reads and is in the words and figures following, to-wit:

STATE OF OHIO, *City of Columbus:*

Supreme Court of the State Ohio of the Term of January, A. D. 1906.

CORWIN D. BACHTEL
vs.
FRANK WILSON, Sheriff of Stark County.

Entry.

Upon motion of plaintiff in error and for good cause shown, it is hereby ordered by this Court that the execution of the judgment herein be suspended, upon plaintiff in error give an undertaking in the sum of seven thousand dollars, subject to the approval of the Clerk of Courts of Stark County, until the final determination of this action in this court.

I, Lawson E. Emerson, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing entry is truly taken and correctly copied from the records of said court, to wit: from Journal No. 21, Page —.

In witness whereof, I have hereunto subscribed my name
11 and affixed the Seal of said Supreme Court, this 9th day of June A. D. 1906.

LAWSON E. EMERSON, *Clerk,*
By J. G. OBERMEYRE, *Deputy.* [SEAL.]

Bond Filed.

And thereupon on this same day there was duly filed in the Clerk's Office of said court a certain bond in this cause, which bond reads and is in the words and figures following to wit:—

Recognizance for Suspension of Execution of Sentence.

THE STATE OF OHIO
vs.
CORWIN D. BACHTEL.

In Supreme Court of Ohio.

No. 10166.

"Error."

THE STATE OF OHIO, *Stark County, ss:*

Be it remembered, that on the eleventh day of June A. D. 1906, Corwin D. Bachtel and D. S. Sommer, G. P. Craig, A. T. Stone, J. H. Bachtel, Helen M. Bachtel and John Skeeles his sureties per-

sonally appeared before Jacob J. Wise, Clerk of Courts in and for the County of Stark aforesaid, and jointly and severally acknowledged themselves to owe the State of Ohio the sum of Seven Thousand Dollars, to be levied of their respective goods and chattels, lands and tenements, if default be made in the condition following to-wit:—The condition of this recognizance is such, that if the above bound Corwin D. Bachtel shall personally be and appear before the Supreme Court of Ohio un[illegible] the above case in error of said Corwin D. Bachtel is determined, and abide the judgment or sentence of the Court, and not depart without leave, then this Recognizance shall be void; otherwise it shall be and remain in full force and virtue in law.

CORWIN D. BACHTEL.
D. S. SOMMER.
G. P. CRAIG.
A. T. STONE.
J. H. BACHTEL.
HELEN M. BACHTEL.
JOHN SKEELES.

Taken and acknowledged in open court on the day and year first above written.

JACOB J. WISE, *Clerk,*
By A. W. AGLER, *Deputy.*

Mandate from Supreme Court Filed.

And afterwards on the 2nd day of July A. D. 1906, there was duly filed in the Clerk's office of said court a certain Mandate from Supreme Court in this cause, which Mandate reads and is in the words and figures following to-wit:—

STATE OF OHIO, *City of Columbus:*

Supreme Court of the State of Ohio, January Term, A. D. 1906, to-wit, Friday, June 29th.

CORWIN D. BACHTEL
vs.
FRANK WILSON, Sheriff.

12 Error to the Circuit Court of Stark County.

This cause came on to be heard upon the petition in error and was argued by counsel of the respective parties. The court find from the record of the Circuit Court brought before it by said petition in error, that the plaintiff in error was indicted by a grand jury of the Court of Common Pleas of Stark County, Ohio, charging him with the commission of an offense contrary to the provisions of a statute of the State of Ohio, to-wit:—section thirty of an act

of the General Assembly of the State entitled "an act to authorize free banking," passed March 21, 1851, as amended April 24, 1879, (3821–85) Bates Annotated Statutes of Ohio; that said section of said statute was and is the only statute or law of the State of Ohio under which said indictment was or could be found, returned or prosecuted; that upon the return of said indictment to said Court of Common Pleas the plaintiff in error demurred to said indictment upon the ground that said statute, section thirty aforesaid, was unconstitutional and that said statute and indictment were void for the reason, among others, that they were repugnant to and contravened the provisions of section one of the fourteenth amendment of the constitution of the United States and that therefore said Court of Common Pleas was without jurisdiction in law over the plaintiff in error, or in respect of the charge made in said indictment, which demurrer was by said Court of Common Pleas heard and overruled; that the plaintiff in error thereafter petitioned one of the judges, of the Circuit Court of the State of Ohio, in and for said Stark County for a writ of *habeas corpus* alleging in his said petition that he was unlawfully imprisoned and deprived of his liberty by the defendant in error by virtue of the order and writ of said Court of Common Pleas made and issued under said indictment, and that said imprisonment was without legal warrant because said Court of Common Pleas was without jurisdiction for the reason that said statute and indictment were void because they were repugnant to section one article one, section two article one, and section twenty-six article two of the Constitution of the State of Ohio, also section one of the fourteenth amendment of the
13 Constitution of the United States; that the judge of said Circuit Court, petitioned as aforesaid, caused said writ of *habeas corpus* to issue to the defendant in error returnable to the three judges of said Circuit Court or any two of them; that upon the return of said writ the plaintiff in error contended at the hearing before the judges of said Circuit Court to whom said return was made that said statute and indictment were void for the reasons aforesaid, but said judges overruled said contention and adjudged that said statute and indictment were not repugnant to said section one article one, section two article one, section twenty-six article two of the Constitution of the State of Ohio, or section one of the fourteenth amendment of the Constitution of the United States, or either of them; that in his petition in error to this court the plaintiff in error assigned as error in the judgment of the judges of said Circuit Court, that said judges erred in holding that section 30 of the act of March 21, 1851 entitled "an act to authorize free banking as amended April 24, 1879, section (3821–85) of the Annotated Statutes of Ohio, was not void and invalid as in violation of section one Article one, section two article one, and section twenty six article two of the Constitution of the State of Ohio and of section one of the fourteenth amendment of the Constitution of the United States. Upon the hearing of this cause before this Court the plaintiff in error contended that said statute was void and valid for the reasons so, as aforesaid assigned. On consideration whereof,

it is decided and adjudged that said statute and indictment are not void nor invalid nor repugnant to the said section one article one, section two article one, and section twenty six article two of the Constitution of the State of Ohio or section one of the fourteenth amendment to the Constitution of the United States or either of them or for any of the reasons assigned in said petition in error, and it is adjudged and ordered by this court that the judgment and order of said judges of said Circuit Court be and they are hereby affirmed and that the order heretofore granted suspending the judgment of said Circuit Court be and the same is hereby dissolved and it appearing to the Court that there were reasonable grounds for
14 this proceeding in error, it is ordered that no fee or penalty shall be assessed herein. It is further ordered that the defendant in error recover his costs from the plaintiff in error herein expended, taxed at $—. Ordered that a Special Mandate be sent to the Judges of the Circuit Court of Stark County, to carry this judgment into execution.

I, Lawson E. Emerson, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing entry is truly taken and correctly copied from the Journal of said Court.

Witness my hand and the Seal of said Court, this twenty-fourth day of July, A. D. 1906.

LAWSON E. EMERSON, *Clerk*,
By J. G. OBERMEYRE, *Deputy*. [SEAL.]

STATE OF OHIO, *City of Columbus:*

Supreme Court of Ohio.

To the Honorable Circuit Court within and for the County of Stark, Ohio, Greeting:

We do hereby command you, that you proceed, without delay, to carry the within and foregoing Judgment of our Supreme Court of Ohio, in the case of Corwin D. Bachtel *vs.* Frank Wilson, Sheriff, into execution, the petition in error herein and heretofore granted, to the contrary notwithstanding.

Witness, Lawson E. Emerson, Clerk of our said Supreme Court of Ohio, at Columbus, this 24th day of July, 1906.

LAWSON E. EMERSON, *Clerk*,
By J. G. OBERMEYRE, *Deputy*.

15 *Opinion of the Circuit Court in Cause No.* 707.

THE STATE OF OHIO, *Stark County, ss:*

In Circuit Court, at Chambers, before Judges Donahue, McCarty, and Taggert.

In the Matter of the Application of CORWIN D. BACHTEL for a Writ of *Habeas Corpus.*

The petitioner, Corwin D. Bachtel, in his petition in *habeas corpus* presented to the judges of this court, claims that he is unlawfully restrained of his liberty by the sheriff of Stark County, Ohio, and prays an order discharging him from such imprisonment.

It appears by the sheriff's return that the petitioner was indicted by a grand jury of Stark County for a violation of Section- 3821-85 of the Revised Statutes of Ohio, and in default of bail was committed to the jail of said county until trial could be had upon said indictment.

The petitioner claims that the indictment is invalid and that the Court of Common Pleas of Stark County has no jurisdiction thereof for the reason that the section under favor of which the State is attempting to prosecute the petitioner is unconstitutional and void, because it is in violation of Sections one and two of Article one of the Bill of Rights, and of Section 26, Article 2 of the Constitution of Ohio, and of Section 1 of the Fourteenth Amendment to the constitution of the United States.

It is contended by the State that this Court ought not to entertain this petition in a *habeas corpus* at this time for the reason that it appears by the return of the sheriff that the prisoner is in the custody of the Common Pleas Court of Stark County, in which
16 said original prosecution is pending; that he has already filed a demurrer to said indictment raising the constitutionality of said section; upon which that court has held adversely to his claim, and that he ought to be required to follow in the regular course and prosecute error to this court when it should appear, the holding of the Common Pleas Court upon that demurrer was prejudicial to the rights of the petitioner. With this contention in the abstract, we are in entire accord. We think that this is the better practice, and one that ought to be insisted upon by all review in courts, for it is not the purpose of *habeas corpus* to bring before a reviewing court errors of the trial court. There is another plain and adequate remedy at law provided for that purpose, but when a petitioner files his petition in *habeas corpus*, averring that he is unlawfully restrained of his liberty, and attacks the jurisdiction of the court issuing the warrant of order for his commitment, we think — is the policy of our law that the question of jurisdiction may be heard, and perhaps ought to be heard, but all questions of mere error or irregularity will not be heard upon such petition, but solely and alone the jurisdiction of the court issuing the writ or order of commitment.

In determining the question raised, then upon this petition in *habeas corpus,* to-wit, the constitutionality of the act under which prosecution is brought, it is necessary to determine whether or not the language of the law itself raises any doubt as to its constitutionality. The three objections urged to the constitutionality of this act are kindred in their nature, and many of the reasons urged by the petitioner why it is in violation of Section 26 of Article 2 of the Constitution of Ohio, are practically the same reasons urged by him as to why it is in violation of Sections 1 and 2 of Article 1 of the Bill of Rights, and also Section 1 of the Fourteenth Amendment of the Constitution of the United States. In fact, the questions raised here by counsel for the petitioner are comprised in the contention that the law is not of uniform operation throughout the State, and for that reason violates all of these constitutional provisions.

17 Turning first to the law itself we find the comprehensive language used:—"Every president, director, cashier, teller, clerk or agent of any banking company *tec.* who shall etc." It is insisted by petitioner that this language does not include many other individuals similarly situated in their business relations to the public, because the words "any banking company" can only refer to banks organized under what is known as the Free Banking act of this state passed in 1851, and that such officers of all other banks are not amenable to this law notwithstanding their occupations and duties are identical with the occupation and duties of the officers of such banks, and that by reason thereof, the law is not uniform in its operation. The presumption, of course, is that this law is constitutional, and it must clearly appear that it is not, before a court is authorized to declare it unconstitutional.

In the case of Slingluff, *et al., v.* Weaver, *et al.,* 66 O. St., 621, the Supreme Court says: "But the intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact? That body should be held to mean what it has plainly expressed, and hence no room is left for construction."

If that doctrine is to be applied to the question here presented, it is an end to this contention, for taking this section alone, without reference to its position in the chapter in which it is found, and without reference to its history, it does clearly appear that it comprises all banking companies in the State of Ohio, and, therefore, the objections urged by the petitioner do not obtain.

But upon the theory that every section of the law must be construed *in pari materia* with other sections applying to the

18 same subject matter, then it might fairly be said in contemplation of the whole chapter that there is a doubt appearing as — whether it includes all banking companies or simply all banking companies organized under the free banking act, and, therefore it may become the duty of the court to investigate the history of

this legislation for the purpose of determining, first, to what character of banks this act itself does apply.

Coming, then, to these considerations, we find that on the 24th day of April, 1879, there was in force and effect what was then known as the free banking act, passed March 21, 1851, Section 30 of which was substantially in the language of Section- 3821-85 of the Revised Statutes of Ohio, except as to the omission in the latter act of various provisions of that section relating to putting in circulation notes and circulating bills of such banks provided for in that act, and upon said day the legislature of Ohio passed an act entitled "An Act Further to Amend the Act entitled "An Act to authorize free banking, passed March 21, 1851, (49 Ohio Laws, 41,) and the act amendatory and supplementary thereto." And section 6 of this amendatory act is an amendment of Section 30 of the original act, and such amendment is now Section- 3821-85 of the Revised Statutes of Ohio. Counsel, however, insist that these sections relating to the free banking act never became a part of the Revised Statutes of Ohio, but to use that term for convenience at this time, and for the further purpose of designating where they can conveniently be found, and not intending to determine whether they are a part of the Revised Statutes or not. They are at least part and parcel of the statute law of Ohio, and as such we are now dealing with them.

Now, as determining whether the phrase in the amended Section 30, "any banking company," applies to all banking companies of the state, or only banking companies organized under the free banking act, it is only necessary to refer to the title of this act, which distinctly avers that it is an act to further amend the — entitled "An Act to authorize free banking, passed March 21, 1851, (49 Ohio Laws, 41), and the acts amendatory and supplementary thereto." So that the conclusion to our minds is irresistable, that the legislature at this time had not in contemplation any other kind or character of a banking institution except those contemplated in the act of March 21, 1851, and that nothing contained in this amendatory act was intended by the Legislature, or by any fair construction thereof could be hold *or* include any other bank, except the class provided for in the original act, including those in existence, or any that might come into existence under the provisions thereof, during the time that said act remain- the law of Ohio.

So that having determined that Section 6 of this amendatory act, which is now found under the sectional numbering 3821-85 cannot by any construction, be held to include banking companies, other than those organized under the provisions of the original act, which this act amended, or sought to amend, the next question arises, as to whether or not the classification therein attempted is imperfect, false or un-atural, and that such classification is resorted to by the legislature for the purpose of giving a special law the appearance of a general law, to evade the constitutional limitations of the power of such legislature.

The Supreme Court has repeatedly said that the legislature has the power to classify, and that the legislative authority of this state is vested in the general assembly in the broadest terms by Section 1

of Article 1 of the constitution, subject only to the limitation elsewhere found in the constitution, and it is, therefore, not within the province of any court to declare void, and annul a statute by reason of a supposed violation of the principles of justice and common reason, if it be within the bounds of constitutional power, the courts having nothing whatever to do with the policy, the justice of the wisdom of the statute, so long as it cannot be said that it contravenes some constitutional provision.

Again our Supreme Court has said, in the case of Railway Company *vs.* Horstman, 72 O. S. page 93, at page 107: "We do not
20 accept without qualification the postulate of the court below, that "Classification cannot be made arbitrarily by the general assembly by seizing upon any incident or characteristic that may suit its purpose." And again, at the bottom of the same page, "that it is only where a false and unnatural classification has been resorted to that courts will interfere."

As a premise to the petitioner's contention here, we are asked to take judicial notice of the fact that there are only a very few such banks in Ohio that come within the contemplation of this section, but it is very doubtful to us whether this contention is correct or not. Certainly it is not of universal knowledge, for it is doubtful if one man in a hundred or even in a thousand of the population of Ohio has such knowledge; but though it may not be of common knowledge, yet if it is a matter that may be of common knowledge by reason of authorized statistics within the right of every man who cares to investigate, then it is a matter that courts will take judicial knowledge of, but that does not so clearly appear in this case. And yet conceding all that counsel claim for it in that behalf, what is the result? That there are some such distince banks existing is admitted, the number is not so important. That there may be tomorrow, next year or the year after a great many more is also within the contemplation of this statute, and was necessarily and properly within the contemplation of the legislature at the time it passed this act, and therefore having conferred privileges in the free banking act, it had a right to impose penalties and restrictions, and to classify them as distinct and separate organization- distinguished from other banks, and differing in their relations to the state and to the public at large, The first inquiry is whether or not, there is such a class existing in Ohio, and the number within that class is, to our minds, of little or no importance. If there is such a class, that is sufficient for the purposes of this case. If there are banks organized under this particular act, if other banks may be
21 organized under it, if the privilege of organizing such banks thereunder is and has been open to the people of the state, and there is almost an entire chapter of our laws devoted to the rights, liabilities and obligations of this character of bank, and penal statutes in reference to the misconduct of officers thereof, how can it be said that such banks are not a distinct and separate class of banking institutions. There are undoubtedly a great many reasons that may be urged why all banking companies in Ohio should be included within the provisions of this section. In fact, to our

minds, there is no valid objection thereto, and every argument that presents itself to our consideration is in favor thereof, but we are not the legislature, and — has been said by the Supreme Court in the 52 O. S. at page 99: "That if the legislature has erred in not including what has been excepted from the operation of the law, it is simply an error of judgment in the exercise of its authority, and cannot be reviewed by the courts." So that the remedy must be sought in the legislature itself. In order that a law of a general nature shall have uniform operation throughout the state, it must apply first territorially to the entire state. Second, to all individuals coming within the class designated by the legislature. And the power to make this classification is not only expressly, but necessarily lodged in the general assembly of the state, for there are few laws upon our statute books that necessarily affect every individual, but rather the great majority of our laws apply*ies* to individuals of a certain class.

On page 99 of the 52 O. S., in the case of the State *vs.* Nelson, Judge Burkett, who announced the opinion in that case, says:— "Very few statutes apply equally to every person in the state. Some apply only to males, some to females, some to minors, some to persons of unsound minds, some to office holders and some to criminals. As pointed out by Marshall, J., in Adler *vs.* Whitbeck, 44 Ohio State, 539, such classes are arbitrarily formed by the general assembly, and "if the legislature has erred in not including what has been excepted from the operation of the law, it is simply an error of judgment in the exercise of its authority, and cannot be reviewed by the courts."

Again, on page 100, quoting from the 70th New York, 22 page 351, Judge Burket, says:—"And does the validity of a law which is required to be general, and which is general in its terms, depend upon the number of subjects upon which it can operate, or upon the size of a class to which it applies. The questions must be answered in the negative."

We are of the opinion from the reading of these and other authorities that the legislature have a right to make such classification, and it is only when it appears that the classification attempted by the legislature is false and unnatural that courts ought to interfere and if there is a doubt in this behalf it must be resolved in favor of the constitutionality of the act, and we are, therefore, of the opinion that the act in question does not violate any of the provisions contended for by the petitioner. But even if we are mistaken about that, if this Section 6 of the amendatory act of April 24, 1879, is unconstitutional, it does not necessarily follow that the petitioner is entitled to a discharge. The original act of March 21, 1851, was passed before the adoption of the constitution of 1851, and, therefore, at the time of the adoption of such constitution was a valid and subsisting law of the State of Ohio, and it remained the law of Ohio, and is, still the law of Ohio unless it has been repealed by a valid act of the legislature. This original section 30 prohibited the acts complained of in this indictment, and but for Section 6 of the amendatory act, an indictment could be returned and prosecuted under the original act for

the commission of the acts therein charged. So that if the contention of the petitioner, that this section 6 of this amendatory act is unconstitutional is sustained, then it follows as a corrollary, that original section 30 is still in force,having never been repealed by a valid act of the legislature. We think the question is no longer an open one in Ohio, that where the legislature have enacted an unconstitutional amendment, and in the same act repealed the original constitutional law, that the repealing clause must fall with the attempted amendment, and to all intents and purposes, the law remains the same as if no such amendment and repeal had been attempted by the legislature.

23 In the case of the State of Ohio *ex rel. v.* Hall, 67 O. S. page 303, the Supreme Court, in the second paragraph of the syllabus, declares: "The repealing section of said act is also void." And on page 306, the Court say, and this opinion is rendered by the Court: The amending act of April 30, 1902 including its repealing section, is wholly void, and Section 1240 Revised Statutes, stands as though such amendment had not been attempted."

This is but following a long line of decisions in Ohio upon this subject. In the 66 Ohio St. page 482 and 483, Judge Shauck, announcing the opinion of the court in the case of State *ex rel.* Knisely *v.* Jones *et al.*, says: "Applying to the case a doctrine with which the lawyers of the state are quite familiar, the repealing section of the present act is inoperative unless its provisions for organization of the board are valid. The system provided by the former legislation being still in full operation, is should continue unless, by a valid act, a system to succeed it has been provided."

In the 60 O. S. at page 273, Wilmot *et al.*, Buckley *et al.*, the court says: "The said section being inoperative, the repealing section contained in the same act is also inoperative, and this leaves section 2926b, as amended April 28, 1890, in force."

In 48 O. S. page 11, the case of the State *ex rel. v.* Smith *et al.*, at page 219, in the opinion by the court, we find the following language: "We see no other valid objection to the law. And as the act itself is invalid, the repealing clause must also be held inoperative as we cannot suppose that the legislature would have repealed this act creating the Board of City Improvements without providing any substitute therefore."

Counsel for the petitioner make the contention that under this doctrine announced in the 48th Ohio State, that there would be no reason for reinstating an act when the old law in all material respects is just like the new one; that there would be no sense or justice in reinstating old Section 30 with its archaic provisions as to paper

24 money after the power to issue it had been taken away. There is, no doubt much logic in this reasoning, but it does not apply to the principle involved here. The question is not as to the reasons and purposes for reinstating such law, but the principle underlying this question is that the invalid act did not effect the valid one that it attempted to repeal, and the court is not now reinstating this act, but would be simply finding that there was no valid act that effected its repeal, and that it simply remains the law of Ohio, because it has

not been repealed by any valid enactment of the repealing power of the state.

So that we are not concerned as to the reasons why it should or should not be reinstated, for we are not reinstating it, but simply determining that no law of the state is repealed by an unconstitutional enactment of the legislature of Ohio purporting to repeal the same. So for this reason, even though all the other contentions of counsel for petitioner be correct the Common Pleas Court has jurisdiction of the cause, and there is a valid constitutional law under which this prosecution is proceeding, and the petitioner is not unlawfully deprived of his liberty and must be remanded to the custody of the sheriff, and such order is accordingly made at the costs of the petitioner and his exceptions are here noted.

We are advised by counsel for this petitioner, that there are similar indictments pending in Stark County court in which they desire to present the same question as is here presented with a view of having it finally determined by a court of last resort, and to this end it is ordered that if any of such application is made to any one of the judges of this court, that he allow the writ to issue and upon the return of the Sheriff showing a similar situation with this case, that a similar order be entered therein in each of said cases,

(Signed) MAURICE H. DONAHUE.
T. T. McCARTY.
FRANK TAGGART.

25 THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Circuit Court, within and for said County, having the custody of the Files, Journals and Records of said Court, hereby certify that the foregoing from page 1 to page 10 is a true copy of the Record in cause No. 707, and from page 10 to page 14 is a certified copy of the Mandates from the Supreme Court and the Supersedeas Bond filed in cause No. 707, and from page 15 to page 24 is a certified copy of the Circuit Court's Opinion filed in Cause No. 707—In the matter of the Application of Corwin D. Bachtel for *Habeas Corpus* as the same appears upon the Records of said Court, and I further certify that I have carefully compared said foregoing copy with the original Record, and that the same is a full correct transcript thereof.

Witness my hand and the seal of said Court, at Canton, Ohio, this 15th day of September A. D. 1906.

[Seal Common Pleas Court, Stark County, Ohio.]

JACOB J. WISE, *Clerk.*

Endorsed on cover: File No. 20,412. Ohio supreme court. Term No. 447. Corwin D. Bachtel, plaintiff in error, *vs.* R. Frank Wilson, sheriff of Stark county, Ohio. Filed October 9th, 1906. File No. 20,412.